IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 189 OF 1999.

1. Shri Latikant Shetye.

2. Shri J.B.F. Fernandes.

3. Shri Vasudev Anant Naik.

4. Shri Zec Casam Ali.

5. Smt. Shakuntala Kalangutkar.

6. Smt. Rukmani D. Pawaskar,
all working under
The Commissioner of Customs &
Central Excise, Panaji, Goa. ... Petitioners.

VERSUS

1. Union of India,
Through the Commissioner of
Customs & Central Excise,
Panaji, Goa.

2. The Commissioner of Customs &
Central Excise, Panaji, Goa.

3. Ms. Fatima Noronha,
Aldona Panarim,
Bardez, Goa.

4. Shri M.B. Sawant,
Saruchem Bhat,
Khumbar Juva, Goa.
Writ stand dismissed as against
Respondent No.4 as per Order
of Addl. Registrar dated
16.12.99 ... Respondents.

Mr. D.P. Bhise, Advocate for the Petitioners.

Mr. V.P. Thali, Senior Central Government Standing Counsel for Respondents No.1 and 2.

CORAM: N.N. MHATRE &
P.V. HARDAS, JJ.

DATE OF RESERVING THE JUDGMENT: 07.01.2004

DATE OF PRONOUNCING THE JUDGMENT:19.01.2004

ORAL JUDGMENT: **(PER HARDAS, J.)**

The petitioners, by this petition under Article 226 of the Constitution of India, pray for calling of the records and proceedings of the case which led to the passing of the impugned Judgment/Order dated 28.4.97 and the Order of Review dated 28.11.1997 and for quashing and setting aside of the same. The petitioners also pray for issuance of a writ of mandamus directing the respondents to promote the petitioners as Preventive Officers.

2. The facts in brief as are necessary for the decision of this petition are stated hereunder :-

The petitioners were promoted in July, 1990 to the post of Preventive Officers on ad hoc basis. The order promoting the petitioners dated 11.7.90 stated that as soon as the Ministry's revised guidelines for promotion of Preventive Officers were received, the petitioners would have to appear before the Departmental Promotion Committee and they would be allowed to continue if they were found fit by the D.P.C. The petitioners had been promoted after undergoing the physical test prescribed under the Recruitment Rules and were so continued till 1995. By Circular No.55/91 dated 30.10.91, willingness were

invited for regular selection for the post of Preventive Officers. The petitioners expressed their willingness to be considered and since they had already undergone the physical test, they were exempted from the physical test and were called for viva voce test.

As per the procedure for selection of Preventive Officers, total marks for CCRs was 80 and the marks for each category of the ACR was as under :-

i - Outstanding - 80,
ii - Very Good - 70
iii - Good - 60

For interview, the total marks were 20 with minimum marks of 10. The marks to be awarded to the candidates were according to the performance in the interview as under :-

i - Outstanding - 20
ii - Very Good - 15
iii - Good - 10

The Select Panel was then required to be prepared on the basis of the aggregate of the marks obtained by the candidates both in the ACR as well as

in the interview.

It appears that the petitioners were not selected as they had obtained less than 10 marks in the oral interview. Being aggrieved, the petitioners filed Original Application No.1297/1995 before the Central Administrative Tribunal Mumbai. The Central Administrative Tribunal, Mumbai, by its Judgment dated 28th April, 1997 dismissed the application of the petitioners. The petitioners also sought review of the said Judgment by filing Review Petition No.95/97 before the Central Administrative Tribunal. The Review Petition also came to be dismissed by the Central Administrative Tribunal by its Order dated 28.11.97. The petitioners have therefore filed the instant petition claiming that they were entitled to be selected and regularly promoted as Preventive Officers in the selection held on 28.8.91 and 15.1.92.

3. The respondents No.1 and 2 have filed their affidavit and have submitted that the petition suffers from laches, as the petitioners are challenging the selection made by the Departmental Promotion Committee in the years 1991, 1992, 1995 and 1996. It was stated that the petitioners did not challenge the Departmental Promotion Committee of the years 1991 and 1992 and thus the petitioners cannot now challenge the

D.P.C. of the years 1991 and 1992. In para 8 of the affidavit, it is stated that the petitioners were initially appointed as Lower Division Clerks in the Office of the Respondent No.2 and were subsequently promoted as Upper Division Clerks and thereafter as Tax Assistants, except the Petitioner No.2, who was initially appointed as Sepoy. In para 9 of the affidavit it is stated that the petitioners No.1, 2, 3 and 4 were appointed as Preventive Officers on ad hoc basis on 11.7.1990 and the petitioners No.5 and 6 were appointed as Preventive Officers on ad hoc basis on 11.7.1990 and the Petitioners No.5 and 6 were appointed as Preventive Officers on ad hoc basis on 31.7.1991. It is further stated in paragraph 10 that the petitioners were appointed against the Regular Direct Recruit vacancies and therefore it was made known to them that if the dossiers of direct recruit candidates were received from the Staff Selection Commission, the petitioners would be reverted on the principle of "last come first go". In paragraph 14 of the affidavit it is stated that the petitioners were reverted to the post of Tax Assistants by Order dated 9.7.1992 and subsequently by Order dated 27.8.92 all the petitioners were again promoted temporarily as Preventive Officers. The petitioners were thereafter reverted to the post of Tax Assistants by Order dated 17.8.1993 and again promoted temporarily as Preventive

Officers by Order dated 30.8.1993. The petitioners were again reverted by Order dated 18.8.94 and by Order dated 6.10.1994 the petitioners No.1, 2, 3 and 4 were promoted temporarily on ad hoc basis as Preventive Officers and Petitioners No.5 and 6 were similarly promoted by Order dated 12.12.1994. By Order dated 30.9.1994 all the petitioners were reverted to the post of Tax Assistants with effect from 14.9.1995. Since the petitioners were not found fit by the Selection D.P.C., the petitioners were not selected as Preventive Officers. The performance of the petitioners was found less than "Good". In paragraph 43 of the affidavit it is stated that subsequent to the filing of the present petition, the petitioners No.1 and 2 have been promoted to the grade of Inspector (Examiner) by Order dated 21.2.2003. The petitioners No.3, 4 and 5 were offered appointment to the post of Inspector (Central Excise) which they had accepted subject to the outcome of their application before the Central Administrative Tribunal. The Petitioner No.6, after the D.P.C. of 1996, opted for promotion in supervisory cadre as Deputy Office Superintendent (Level II).

4. Mr. Bhise, the learned counsel appearing on behalf of the petitioners, by placing reliance on the Judgment of the Apex Court in **Shiv Kumar Sharma and**

another v. Union of India and others, reported in (1997) 11 S.C.C., 112 has urged before us that since the petitioners admittedly had worked as Preventive Officers, they should be given the benefit of their service and they should be graded one step higher than that actually awarded. Thus, according to Mr. Bhise, the petitioners would then be graded as "Very Good" and would thus be entitled to be selected.

5. The Apex Court in **Shiv Kumar Sharma's** case, in paragraph 3 of the Judgment referred to the Full Bench decision of the Central Administrative Tribunal dated 29.10.1991 in **S.S. Sambhus v. Union of India.** The Report of the Apex Court extracts the relevant portion from the Judgment of the Administrative Tribunal which reads as under :-

> " The only reasonable and just suggestion that in our opinion can be made to meet the ends of justice in the circumstances of the case is that for the period during which the applicants shouldered the higher responsibilities for the higher Class I posts of ASW/SW, their gradation as SA should be treated as one level higher than the grading awarded to them as ASW as per the ACRs for that period. That is, if the ACR as ASW reflects "good" it should be taken as "very good", and if "very good", then it should be

> taken as "outstanding". In this manner they are placed on equal footing for the purpose of assessment of comparative merits." (See S.S. Sambhus v. Union of India.) "

6. In paragraph 6, the Apex Court then held that the UPSC should be directed to reconsider the case of the appellants therein in the light of the Judgment of the Full Bench of the Central Administrative Tribunal.

7. The learned counsel for the respondents has referred to the Judgment of the Division Bench of this Court dated 17th June, 1999 in Writ Petition No.115/99, wherein a similar proposition was advanced. The Division Bench of this Court, with reference to the Judgment of the Apex Court, held as under :-

> " ..... The ruling of the Apex Court upon which reliance has been placed would not in any manner help the case of the Petitioner, since in the said ruling the Apex Court had approved judgment of the Full Bench of the Central Administrative Tribunal wherein a formula had been evolved <u>with reference to the facts and circumstances of the said case.</u> (Emphasis as is supplied in the Judgment) ".

8. We are thus bound by the Judgment of the Division Bench of this Court and even otherwise, according to us, the Judgment of the Apex Court on

which reliance has been placed is wholly inapplicable to the facts and circumstances of the present Petition. The petitioners have been considered by the Departmental Promotion Committee and the Committee found that the petitioners had obtained less than 10 marks in oral interview and therefore the petitioners were not found fit. Merely because the petitioners had worked for some time as Preventive Officers, the petitioners cannot claim that they be graded a degree higher than what they have actually received. The petitioners were appointed temporarily on ad hoc basis with a clear understanding that they would be reverted on the duly selected incumbent being appointed. We, therefore, see no merit in the submissions of the learned counsel for the petitioners.

9. In the result, therefore, Writ Petition is dismissed. Rule discharged with no order as to costs.

NISHITA MHATRE, J.

P.V. HARDAS, J.

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